



**IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE AT KOLAR**

DATED 13TH DAY OF SEPTEMBER 2022

PRESENT

Sri. H. DEVARAJU, B.A., LL.B.,
II Additional District & Sessions Judge,
Kolar.

S.C. NO.8/2014

COMPLAINANT : State of Karnataka
Reptd. by Sub-Inspector of Police
Kolar Town Police Station,
Kolar District.

(Reptd. by **Special Public Prosecutor**)

V/s.

ACCUSED :

1. Sri. S K Santhosh Kumar
S/o. S R Krishnappa, 32 years,,
Librarian, Sulibele Govt First
Grade College, Hosakote,
- 2: Sri. S R Krishnappa
S/o. late Ramappa, 60 yrs.,
- 3: Smt.Chennamma
W/o. S R Krishnappa, 50 yr.,

All are R/at. Shagathur village
Srinivaspur Taluk

. (Reptd. by **Sri. S Shankarappa,**
Advocate)

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Order on application filed under Sec.315 of Cr.P.C.
treated as Sec.233 of Cr.P.C.

This Application has been filed by the defense counsel on behalf of accused persons under Sec.315 of Cr.P.C. seeking to summon following witnesses for the purpose of defense evidence:-

1. Medical Officers Dr. Ambuja, Dr. Chandrashekar and Dr. Sriram, Lakshmi Hospital, Bengaluru to produce medical records for having treated and examined Smt. Veena on 22-06-2011 to 25-06-2011.
2. Smt. Seema, Joint Director and Principal of Government First Grade College, Sulibele Village, Hosakote Taluk, Bengaluru Rural to produce 'To' register for the year 2013 and to appear along with it.
3. Venkatesh Y., Principal of Government First Grade College, Sulibele, Hosakote Taluk, Bengaluru Rural.
4. Sri. Ashwathappa, Retired Principal of Government First Grade College, Vemgal, Kolar District.
5. Sri. Anil C.S., Manager, Pay and Parking, KSRTC Bus Stop, Kolar in the interest of justice.

2. In this application the accused No.1 has contended that he intend to adduce further evidence and list of witnesses were already

produced before the court on 03-01-2022 and all the witnesses evidence is very essential for just decision of the case. Further, he contended that he wanted to examine the Medical Officer from Lakshmi Hospital, Bengaluru, Dr. Ambuja and Dr. Chandrashekar have examined the then Veena on 22-06-2011 to 25-06-2011 as an impatient and attested the case sheet pertaining to deceased Veena which has been marked as Ex.D.21.

3. Further, it is contended that the Manager, Pay and Parking, KSRTC, Kolar issued an endorsement where the accused No.1 parked his motor cycle in the said premises and later on 09-10-2014 got back his vehicle by giving endorsement for recollecting the motor cycle. The said Manager handed over the said vehicle along with letter to accused No.1 on that day and same has been marked as Exs.D.27 and 28.

4. Further, it is contended that Venkatesh Y., Principal of Government First Grade College, Sulibele Village, Hosakote Taluk, Bengaluru Rural District. Smt. Seema, Director and Principal at Government First Grade College, Sulibele Village, Hosakote Taluk, Bengaluru Rural District. Ex.D.8, Ex.D.23 to Ex.D.25 have been marked which has been endorsed by the above witnesses.

5. Further, it is contended that Sri. Ashwathappa, Retired Principal of Government First Grade College, Vemgal, Kolar District who endorsed the letter addressed by Principal of First Grade College, Sulibele and it is to be confronted.

6. Further, it is contended that the above mentioned witnesses are to be examined and their evidence are very essential for just decision of the case. If his application is not allowed, he will be put to more hardship and injustice.

7. On receipt of this application the learned Special Public Prosecutor has filed objections by opposing the prayer of this application by contending that the application is not maintainable either in law or on facts and circumstances of this case. DW-1 was completely cross examined by the State and hence invoking Sec.315 of Cr.P.C. once again is nothing but abuse of process of law. Dr. Ambuja who the accused No.1 wants to examine is expired and Ex.D.1 to Ex.D.21 does not reflect the name of two Doctors Dr. Chandrashekar and Dr. Sriram and hence examining these Doctors are irrelevant to the case as per Sec.106 of Indian Evidence Act. Further, he has contended that the document relating to parking of motorcycle of accused No.1 which is marked as Ex.D.27 and Ex.D.28 and examination of Ashwathappa N. who is retired Principal of Government First Grade College, Vemgal Village are irrelevant. Viewed from any angle examination of proposed witnesses from 1 to 7 are irrelevant to the just decision of the case. This application is filed only with an intention to drag the proceedings. This accused earlier had also filed application under Sec.91 Cr.P.C. to get 'To' Register for the year 2013 and the same has been rejected by this court on 18-09-2021. Consequently, it is prayed to dismiss this application.

8. In furtherance of prayer sought in the application, the points that would arise for my consideration is:-

1. Whether the accused persons have made out grounds for allowing the said application?

2. What Order?

9. During the course of argument, the learned counsel for accused filed a memo by stating that he got mentioned the wrong provision to this application as Sec.315 of Cr.P.C. and instead of it to treat this application as one under Sec.233 of Cr.P.C. The memo was accepted by this court.

10. I have heard the arguments of defense counsel and Special Public Prosecutor on this application.

11. On consideration of the facts and circumstances of this case and also the reasons contended in the application, I answered the above points as follows:

Point No.1 : **Affirmative,**

Point No.2 : As per final order
for the following: -

REASONS

12. POINT NO.1 :-

As noticed from the records, the evidence of the prosecution is completed and recorded the statement of accused under Sec.313 of Cr.P.C. and provided the opportunity to the accused to lead defense evidence. In furtherance of the said opportunity and as a matter of right of defense, the defense counsel has lead the defense evidence by examining accused No.1 as DW-1 and got marked as many as 29 documents as Exs.D.1 to 29.

13. However, this prayer is strongly opposed by the Special Public Prosecutor with the contention that it is only to protract the proceedings and with the contention that they are irrelevant and unnecessary witnesses.

14. During the course of arguments, both the parties have addressed their respective arguments as per their contentions in the application and objection. In furtherance of the prayer sought in this application, I have carefully gone through the facts and circumstances of this case and noticed the production of as many as 29 documents in furtherance of the defense. On perusal of cross examination of all the witnesses, the defense is under total denial of the alleged offences made against accused No.1 with plea of defense of alibee. As per the contents of this application the accused persons sought to elicit the evidence regarding the treatment to the deceased and also regarding his otherwise engaged on his official

duty. But, these reasons are denied as untenable with the contentions that Dr. Ambuja is already expired.

15. Under this circumstance, the court cannot come to definite conclusion regarding the relevancy or irrelevancy of the evidence that would be dealt through the above mentioned witnesses without they being examined before this court. In addition to it, the court cannot determine the non existence of defense through the above cited witnesses. As such, I am of the opinion that the prosecution having every right to thrash out any of such evidence elicited by them in the cross examination, no harm or injustice will be caused to the prosecution if they are summoned as defense witnesses for the reasons contended in the application. Therefore, the objection raised by the prosecution holds no good and right of defense cannot be curtailed without upholding the opportunity to lead their evidence. Therefore, I am of the opinion that this application treating one under Sec.233 of Cr.P.C. deserves to be allowed. However, Dr. Ambuja being contended as expired, is not supposed to summon as sought in this application. Accordingly this point for consideration is answered in the **affirmative**.

16. POINT NO.2 : For the reasons discussed and conclusion arrived at point No.1, I proceed to pass the following: -

ORDER

The Application under Sec.315 of Cr.P.C. treated one under Sec.233 of Cr.P.C. filed by the Accused persons is hereby allowed.

**The case is posted to take steps to summon
the witnesses except Dr. Ambuja.**

(Dictated to the stenographer on computer, computerized by him, revised,
corrected and then pronounced by me in open court on this the
13th day of September 2022.)

Sd/-

(H. DEVARAJU)

II Addl. District & Sessions Judge,
Kolar.

snb/-*